REMARKS

Claims 1, 3-24, and 26 are currently pending. Claims 2, 25, and 27-53 were previously cancelled without prejudice. No new matter has been added.

Rejections under 35 U.S.C. § 103(a)

Claims 1, 3-24, and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hirabayashi et al., "Contact of hydroxyapatite spacers with split spinous processes in double-door laminoplasty for cervical myelopathy," J. Orthop. Sci., 4:264-268 (1999) ("Hirabayashi") in view of U.S. Patent No. 6,511,509 to Ford et al. ("Ford"). Applicants submit these rejections should be withdrawn.

Independent claims 1 and 18 recite an implant insertable between first and second bone ends or segments, having first and second bone engaging portions and an inner side region, "wherein the inner side region is angled with respect to each of the bone engaging portions at an angle ranging from about 50 to about 70 degrees." Examiner stated in the pending office action that Hirabayashi "discloses the development and optimization of implants for double-door laminoplasty, wherein the resulting implants have angled surfaces clearly within the claimed range of 'about 50 to about 70 degrees.'" (Non-Final Office Action mailed January 24, 2006 at 3).

Hirabayashi describes experiments held using the STSS spacer in laminoplasty applications "to evaluate the contact rate of the STSS spacer with spinous process in patients." (*Id.* at 264). However, although the STSS spacer is shown to be generally trapezoidal in shape (*see* Fig. 1b), Hirabayashi discloses <u>*no angles*</u> for the STSS implant described therein. Moreover, the purpose of the Hirabayashi study was to determine the *contact* of a specific implant (the STSS) with the spinous process — Hirabayashi does not explicitly or implicitly implicate the *angles* of the STSS implant as having anything to do with achieving this goal. Rather, Hirabayashi states that implant *shape and size* are relevant considerations in achieving sufficient contact between the implant and spinous process, which are only configurable *after* the spinous process is bisected. (*Id.* at 267-68). Thus, not only is there is no disclosure of angles in Hirabayashi, there is no suggestion or motivation to arrive at angles "ranging from about 50 to about 70 degrees" to optimize the STSS implant. *See In re Antonie*, 559 F.2d 618 (CCPA 1977) (not obvious to modify to optimize when reference did not recognize the result-effective variable).

Ford fails to remedy the deficiencies of Hirabayashi. Accordingly, as Hirabayashi and Ford, either singly or in combination, fail to teach, suggest, or disclose each and every element of claims 1 and 18, the rejections of those claims should be withdrawn.

Similarly, as dependent claims 3-17 depend from independent claim 1, and dependent claims 19-24, and 26 depend from independent claim 18, the rejections of those claims should also be withdrawn, for at least that reason.

CONCLUSION

It is believed that claims 1, 3-24, and 26 are in condition for allowance. Should the Examiner not agree with Applicants' position, then a personal or telephonic interview is respectfully requested to discuss any remaining issues.

No fee is believed due for this response. Should any fee(s) be due at this time, please charge such fee(s) to Jones Day Deposit Account No. 503013.

Respectfully submitted,

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